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 13 Admitted Pro Hac Vice in related Federal Case No. 3:06-cv-0056- and 00145-LRH (VPC).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

14 In the Matter of the Search of:) CASE NO.: 3:06-CV-0263-LRH (VPC)
 15 12720 BUCKTHORN LANE, RENO, NV) 3:06-0023-VPC
 16 and) DECLARATION OF ATTORNEY MICHAEL J.
 17 888 MAESTRO DRIVE, RENO, NV, STORAGE) FLYNN IN SUPPORT OF EX PARTE MOTION
 18 UNIT NUMBERS 136, 140, 141, 142, AND 143) TO SHORTEN TIME AND MOTION TO
 19) UNSEAL.
 20) **FILED UNDER SEAL**

21 I, Michael J. Flynn, declare:

22 1. I am an attorney licensed to practice in the state of Massachusetts. I am counsel for
 23 Dennis Montgomery in the state and federal civil matters involving Warren Trepp, appearing *pro hac*
 24 vice in related Federal Cases 3:06-cv-0056-LRH (VPC) and 00145-LRH (VPC). I either have personal
 25 knowledge, and/or substantially corroborated information and belief of the facts stated herein, and if
 26 called as a witness, I could and would testify competently to them. Where I have information and
 27 belief as to certain facts that have not been substantially corroborated, I have placed the designation
 28 "I & B" in parenthesis following the statement. Where the facts relate to vital and secretive national
 29 security concerns that I have intentionally referenced in an incomplete, obtuse or oblique way, I
 30 103

1 have made the designation "MD," referencing the sealed declaration of Dennis Montgomery. That
2 declaration was first provided by hand delivery to Judge Brian Sandoval on November 1, 2006, and
3 apparently shredded by him on that same day when he recused himself (I&B); and then provided by
4 hand delivery to this Court on November 28, 2006. I submit this declaration in support of Mr.
5 Montgomery's Motion to Unseal all sealed materials in the search matter forthwith.
6

7 2. For reasons and facts enumerated herein, this case should be unsealed *immediately*,
8 even while this Court is reviewing the "Order" of Judge Valerie Cooke issued on November 28,
9 2006. In order to decide this motion, it is critical for this Court to know and separate facts and issues
10 in the three cases before the Court. On the one hand, there are the two civil cases which directly and
11 inextricably involve facts and evidence based on the utilization of Mr. Montgomery's software in the
12 "Special Access Programs" relating to extremely grave, vital and "Top Secret - Special Information
13 Compartimentalized" national security concerns in the war on terror. (MD)¹ On the other hand, there
14 are the facts, issues, and the record in the search matter based on Mr. Montgomery's Rule 41 g
15 Motion seeking the return of his computers and property based on the egregious misconduct by the
16 Motion seeking the return of his computers and property based on the egregious misconduct by the
17 Nevada U.S Attorney and Nevada FBI in the unconstitutional raid on Mr. Montgomery's home,
18 corruptly engineered and designed to, in effect, "steal" Mr. Montgomery's software "source codes"
19 on behalf of Warren Trepp. **The search matter record is devoid of any facts, evidence, documents,**
20 **transcript references or exhibits that threaten national security.** But for reasons stated herein, Mr.
21 Montgomery is gravely concerned that the Government will now seek to delay the unsealing of the
22 Montgomery is gravely concerned that the Government will now seek to delay the unsealing of the
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25 ¹ Please see the "public" declaration of former DNI, John Negroponte, and the sealed
26 declaration submitted by his office (presumably by him, although, of course, it has never been seen
27 by Mr. Montgomery, or his counsel). Also, please review the sealed declaration of Mr. Montgomery
28 supplementing the sealed declaration of the Government specifically relating to his interaction with
[REDACTED] and Air Force officials having knowledge of his exclusive ownership and possession of the
software used in the Special Access Programs.

1 search matter by any means available, including: (i) specious appeals; (ii) false and contrived ex parte
2 declarations, (as it has repeatedly attempted - most recently with this Court while it was "appealing"
3 Judge Cooke's Order to Show Cause for Contempt against the Nevada U.S. Attorney's Office); and/or
4 (III) assertion of the state secrets privilege *in the search matter*. The compelling urgency for this
5 motion arises out of the following facts.
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7 3. The United States Government, more specifically the Bush administration, the Air
8 Force, USSOCOMM (United States Special Operations Command) and [REDACTED], are in need of full
9 and immediate utilization of Mr. Montgomery's software technology in the war on terror. Individuals
10 within these branches of Government know, *having worked directly with him*, that the technology is
11 exclusively owned, possessed and operated by Mr. Montgomery; and that it is demonstrably effective
12 in [REDACTED]
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14 4. Based on over nine months of observations and personal interactions with numerous
15 individuals associated with this matter, I have observed that such utilization is currently obstructed
16 by either divisive, and/or confused, and/or indecisive, and/or biased, and/or ignorant, and/or
17 intentionally corrupt decision making by *specific individuals* within the Bush administration, and/or,
18 currently, within the Air Force. The Nevada U. S. Attorney's Office, former Congressman James
19 Gibbons, and Air Force General Ronald Bath, and other Air Force officials form the core of the
20 misconduct and the failure to utilize the technology. I do not have sufficient personal knowledge, or
21 even sufficient information and belief, as to which of the foregoing reasons, or a combination
22 thereof, constitutes the bases for the current failure to utilize the technology *specifically within the*
23 *highest ranks of the Bush administration*, while the concealment of Governmental misconduct and
24 corruption continues. But I do know that One Hundred Million Dollars was appropriated for
25 purchase of a portion of Mr. Montgomery's technology in January, 2006, said appropriation
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1 apparently remains unused while lives are being lost, the Nevada based governmental misconduct
2 continues with the harassment of Mr. Montgomery by Daniel Bogden and the local FBI, and it
3 appears that a potential cover-up is in the making. (I&B).

4 5. In January, 2006, after fourteen months of utilization by [REDACTED], tested and confirmed
5 solely by Mr. Montgomery's "output" because of the urgency involved therein, and after twelve
6 months of both utilization and independent testing with confirmation by the Air Force, the Air Force
7 obtained an appropriation for One Hundred Million Dollars to purchase a portion of Mr.
8 Montgomery's technology then being used to [REDACTED], (MD).²
9 This appropriation was legitimately based on the value of the software for use in the war on terror,
10 but it was engineered by General Bath, then Congressman Gibbons and others within the Air Force
11 and individuals within the Bush administration to flow the proceeds of the appropriation pursuant to
12 a specific federal contract to Warren Trepp. (MD). Mr. Montgomery was aware of this scheme
13 concocted by Trepp, Gibbons, Bath and others, and left his independent contracting position at
14 eTreppid Technologies in January, 2006 approximately at the same time as the appropriation was
15 confirmed. (MD). Air Force Special Agent Paul Haraldsen played a key role in both the utilization of
16 the technology in 2004-05, removing it from [REDACTED] control, obtaining the federal contract for Gibbons
17 and Trepp, and subsequently in the false fabrication of facts to obtain the search warrants. (MD).

18 6. Over the past ten months, following the illegal raid on the home of Mr. Montgomery,
19 an internal conflict has raged within the Bush administration led on the one hand by a group
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21 _____
22 ² Both [REDACTED] and Air Force (approximately
23 sixteen identifiable individuals) personnel personally working with Mr. Montgomery on a daily basis,
24 often as long as eighteen hours a day, knew that the software then being used on certain "Special
25 Access Programs" ("SAP") was exclusively owned, possessed and operated by him. They knew that
26 no other person on earth had access to the source codes to "run" the programs and that self
27 destructive "intrusion protocols" protected the software from access by anyone other than Mr.
28 Montgomery, particularly Warren Trepp and his employees.

1 protecting the interests of Warren Trepp including Daniel Bogden, James Gibbons, Air Force General
2 Ronald Bath and Justice Department lawyer Peter Keisler (nominated for a federal Judgeship by the
3 Administration in June, 2006, while he was making critical decisions on these matters) and their
4 allies; and on the other hand, by several U.S. Senators and Congressmen, and [REDACTED] and
5 ranking Republican aides and officials who have scrutinized this case objectively with no allegiance
6 to either Trepp or Mr. Montgomery, but have been blocked by individuals within the administration
7 working on behalf of Trepp. Although all of them recognize that vital national security concerns are
8 at stake and that immediate utilization of Mr. Montgomery's software is imperative, they are engaged
9 in partisan, political warfare over money and self-interests. (I&B). General Bath, James Gibbons,
10 Daniel Bogden and other Air Force officials working with high level Bush administration officials
11 (probably within the office of the DNI - (I&B)) have blocked it's use. This group has sought to not
12 only justify the unconstitutional raid on Mr. Montgomery's home within the Bush administration by
13 means of knowingly false statements, memos etc. as an appropriate law enforcement action under
14 the Fourth Amendment, they have also knowingly concealed , and/or misrepresented, and/or, until
15 recently, they have deceived high ranking Bush administration decision makers about the findings,
16 conclusions, basis and Order of Judge Cooke. (I&B).

20 7. I am in direct and indirect (through specific individuals) contact with several agencies
21 of the United States Government, (direct and indirect), several high ranking Bush administration
22 officials (indirect, but reliable and corroborated) and several Congressional Committees (direct and
23 indirect) involving issues, facts and documents relating to the cases now pending before this Court.
24 Many of the documents and transcripts currently under seal in the search matter are essential to on-
25 going investigations by these Government agencies and Committees. At least one or more of these
26 investigations originated as a result of the internal distribution of the findings and "Order" of Judge
27 28 investigations originated as a result of the internal distribution of the findings and "Order" of Judge

1 Cooke (issued on Nov. 28, 2006) by officials within the Department of Justice, without my
2 intervention. I have also filed a False Claims Act Complaint currently under seal relating to the
3 alleged misconduct of James Gibbons, Warren Trepp and several Air Force officials involved in the
4 procurement of multiple federal contracts based on Mr. Montgomery's software technology. I have
5 also sent a letter to the Public Integrity Section of the Department of Justice with multiple exhibits.
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7 8. Time is of the essence in all of these matters. The software technology exclusively
8 owned and possessed by Mr. Montgomery at issue in the subject cases has *only* been *partially*
9 utilized in the last nine months in the war on terror and has indisputably saved American lives.
10 (MD). Mr. Montgomery has gratuitously processed "data" and freely provided the "output" from this
11 data to the appropriate U.S. authorities, but it has not been done with "accelerated processors" and
12 main frame computers because of harassment and interference by the Nevada U.S. Attorney's Office
13 and local Reno FBI. (MD). The corruption of the Nevada U.S. Attorney's Office by James Gibbons
14 and Warren Trepp resulting in the illegal raid on Mr. Montgomery's home for the purpose of
15 and "stealing" the source codes to the software has directly and substantially interfered with the full
16 utilization of the technology. (MD). National security mandates that it be fully utilized forthwith.
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18 9. Mr. Montgomery's computers and property have now been unlawfully retained by the
19 Reno FBI and the Nevada U.S. Attorney's Office for over ten months without any legal justification;
20 and even after they have admitted that the primary basis to conduct the raid - "unlawful retention of
21 classified information" - never existed in the first place. Moreover, the inventories prepared by the
22 local, Reno FBI do not fully itemize or disclose items that were illegally seized.
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24 10. Since April, 2006, and as recently as December 2006, Mr. Montgomery, through
25 various representatives, has had repeated and extensive communications with specific officials
26 within the highest levels of the Bush administration for the purpose of exposing the corruption in
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1 Nevada; and to make his technology available to the Bush administration for the protection of this
2 Country.

3 11. *Certain specific officials* within the highest levels of the Bush Administration, the Air
4 Force, the [REDACTED] the Department of Justice, and specifically, the former
5 Director of National Intelligence, John Negroponte, appear to have either been given false and/or
6 conflicting, and/or incomplete information (regardless of the true facts) about the classified
7 information basis to raid Mr. Montgomery's home; and/or about Montgomery's ownership of the
8 technology; and/or the illegal conduct of the Nevada U.S. Attorney's Office and local, Reno FBI;
9 and/or in connection with other material issues; and/or they are motivated by personal agendas
10 driven by unknown motives; and/or certain *specific individuals* are protecting and assisting James
11 Gibbons and certain Air Force Generals on behalf of Warren Trepp without the knowledge or
12 authority of others within the administration, and/or within the office of the Director of National
13 Intelligence. (I&B). At this time it is unclear which officials have blocked the utilization of the
14 technology within the highest levels of our government, and which officials, if any, have sanctioned
15 either out of ignorance, or intent, the misconduct of the Nevada U.S. Attorney's Office and the local
16 FBI. Several of them have claimed that they did not know either that the Nevada U.S. Attorney
17 falsely claimed that Mr. Montgomery was allegedly in possession of classified information, or that
18 Montgomery still possessed a Top Secret - SIC Clearance to do so even if he did. Such conflicts, at
19 least within the Bush administration and the Air Force, have adversely impacted the utilization of Mr.
20 Montgomery's technology and have directly jeopardized national security. *Such conflicts need to be*
21 *resolved as soon as possible. The evidence in the search case provides detailed facts and*
22 *documents upon which to do so.*

23 12. The only means to address and resolve these problems may be the use of said evidence
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1 through congressional oversight specifically in the context of hearings by several committees of the
2 Senate. These issues plainly overlap into the three branches of our government. Plainly, the raid on
3 Mr. Montgomery's home was based on grossly fabricated claims relating to classified information,
4 when the truth was available by a simple telephone call as hereinafter set forth. The unsealing of the
5 record in this matter and concomitant exposure of that record to the full spotlight of truth, which only
6 a First Amendment driven free press can accomplish, will serve the dual purpose of exposing
7 corruption and protecting national security. (I&B). Otherwise both of these interests will languish
8 while lives will be lost and the machinations of power will prevail. (I&B).

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10 13. During the past nine months, I have personally observed that the national security of
11 the United States, at least in relation to the utilization of Mr. Montgomery's technology, has been
12 subjected to the personal and political agendas of individuals at the highest levels of Government
13 as manifest in the corrupt use of the local, Reno FBI and Nevada US Attorney's Office in the illegal
14 raid on Mr. Montgomery's home; and the subsequent, continued harassment of Mr. Montgomery
15 after high level officials within the administration were explicitly informed both in writing and in
16 personal visits by representatives of Mr. Montgomery. The search case documents, exhibits and
17 transcripts specifically relate to the abuse of governmental power by the Nevada U.S. Attorney and
18 Nevada FBI, all initiated by James Gibbons who has admittedly received undisclosed financial
19 benefits from Warren Trepp

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21 14. I have indirect but reliable and confirmed knowledge that the findings and Order of
22 Judge Cooke issued on November 28, 2006, in the search matter, as soon as it was internally
23 distributed to investigative agencies within the Department of Justice by the Attorney General's
24 office, resulted in significant and substantial progress in resolving internal conflicts at least within the
25 Department of Justice to those who have had access to it. And it has had a positive impact within the
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1 Department of Defense to those who are aware of it.

2 15. All government officials that I have communicated with are aware that Judge Cooke's
3 Order is currently under *de novo* review by this Court, and are anxiously awaiting both the final
4 order of this Court and the unsealing of the case.

5 16. Prior to Judge Cooke's order, several Bush administration officials claimed to be
6 unaware of the underlying facts involved in the search matter including the fact that the Nevada U.S.
7 Attorney claimed he was primarily conducting the search and seizure based on Mr. Montgomery's
8 unlawful retention of classified information. Nor were they aware that the FBI and U.S. Attorney's
9 Office subsequently *admitted* after being challenged, that there was no classified information
10 involved at all. As Judge Cooke found, the representations of material fact in the search affidavits
11 relating to the alleged unlawful retention of classified information were critical facts in her decision
12 to issue the warrants.

13 17. The subsequent *admissions*, collectively down the chain of command, by the Bush
14 administration, the Air Force, the Department of Justice, by Nevada U. S. Attorney Daniel Bogden,
15 and by the local, Reno FBI , as early as June 1, 2006 just prior to the commencement of the
16 evidentiary hearings, that there was no basis to believe or to conduct the raid based on classified
17 information, strongly suggests that the evidence in support of those claims was intentionally
18 fabricated by at least two officials within the Air Force, by the local, Reno FBI office, and by the
19 Nevada U.S. Attorney's Office all acting in collusion. (I&B). It is likely that other key officials within
20 the Air Force and/or the administration were unaware of said fabrication at the time the search
21 affidavits were submitted as evidenced by the subsequent admissions. (I&B). Classified information is
22 something easily determined by checking with the "Original Classification Authority" ("OCA") that
23 made the designation. Not only did the Nevada US Attorney, a special Air Force investigator, and a
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1 local, Reno based FBI agent collectively misrepresent the facts relating to classified information, they
2 relied upon knowingly false documents (Form DD 254) both at the time of the search and during the
3 evidentiary hearings. These same officials also knowingly misrepresented Mr. Montgomery's Top
4 Secret SIC security clearance which entitled him to possess the information in the first place.
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6 18. As explicated at length in Judge Cooke's findings and Order, these same government
7 officials knowingly and intentionally deleted key portions of the primary documents relating to the
8 ownership of the technology. After fabricating a completely false picture of ownership of the
9 technology to the issuing Magistrate, as explicitly set forth in these documents, these same officials
10 compounded their falsehoods by relying on other facts, documents and evidence in the search
11 affidavits and in the evidentiary hearings which were also demonstrably false and/or distorted beyond
12 recognition. Judge Cooke, as the issuing Magistrate, referenced these falsehoods in her Order finding
13 that she was "misled". The U.S. Attorney has not and cannot refute these findings in his appeal to this
14 Court.
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16 19. Nevada U.S. Attorney Daniel Bogden has been discharged. Assistant US Attorney Paul
17 Pugliese, who was assigned to the Montgomery search matter has resigned or been discharged.
18 Director of National Intelligence, John Negroponte has been removed. It is essential that the Senate
19 Intelligence Committee and The Public Integrity Section of the Department of Justice and other
20 Government agencies be provided with documents and transcripts from the search matter as soon as
21 possible. The ultra aggressive use, and flagrant abuse, of governmental power under the Fourth
22 Amendment, against American citizens, particularly patriotic ones like Mr. Montgomery, by the
23 political party in control of the administration of our government for the purpose of manipulating the
24 system in favor of rich and powerful contributors to direct federal contracts in the hundreds of
25 millions of dollars to said contributors by that same particular political party, represents a significant
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1 and substantial threat to fundamental liberties. (I&B). This case is a prime example of such abuse.
2 The fact that vital issues of national security are involved further raises the need for full and complete
3 disclosure of governmental misconduct to the American citizenry as soon as possible before the
4 Government casts a veil of secrecy on the search matter through the unwarranted assertion of the
5 state secrets privilege. (I&B). Corruption should not be concealed under the guise of national
6 security.

7 20. To my knowledge, there are no documents or transcript references in the search matter
8 adversely affecting national security. There are, of course, the sealed declarations of Dennis
9 Montgomery and from former DNI Negroponte in the civil cases, which have grave implications for
10 national security. Mr. Montgomery requests that those declarations remain under seal.

11 21. Based on my personal involvement in these matters for over twelve months, I believe
12 that the unsealing of the search matter will have a cleansing affect on the administration of justice
13 and achieve substantial results in protecting our national security. Continued sealing will have
14 adverse and potentially extremely grave consequences for both the administration of justice and our
15 national defense.

16 22. I have spoken to AUSA Ron Rachow requesting an order shortening time for this
17 motion to be heard. He refused stating that the reasons for his refusal are contained in the
18 Government's "Objections" to Judge Cooke's Order.

19 Signed under the pains and penalties of perjury under the laws of Nevada and the United States this
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21 18th day of January, 2007.

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26 /s/
27 Michael J Flynn, Attorney for Dennis
28 Montgomery

CERTIFICATE OF SERVICE

I, Zachary Draper, declare: I am an employee in the City of Reno, County of Washoe, State of Nevada, employed by the Law Office of Logar & Pulver, PC, located at 225 S. Arlington Avenue, Suite A, Reno, NV 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with the Law Office of Logar & Pulver's practice for the collection of mail, delivery of its hand-deliveries, their process of facsimile's and the practice of mailing.

On Jan. 18, 2007 I caused the following documents, (1.) the Montgomerys' Opposition to the Gov't Objections to the Nov. 28, 2006 Order, with attachment Exhibit A; and (2) this certificate of service to be delivered to the following persons and/or entities:

Sent Via Hand Delivery:

1. Jake Herb or Lia Griffen, or U.S. Dist. Court, District of Nevada, Reno, U.S. District Court, 400 S. Virginia St., Reno, NV 89501; and
2. Ronald Rachow, AUSA, and the Reno U.S. Attorney, United States Attorney's Office for the District of Nevada, 100 W. Liberty Street, Reno, NV 89501; fax (775)-784-5181.

Robert D. ...

Zachary Draper
For the Law Office of Logar & Pulver